

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

B.F. and A.F., MINORS, et. al.	:	Case No. 1:21-cv-425
Plaintiffs,	:	Judge Matthew W. McFarland
v.	:	DEFENDANT TIMOTHY
CINCINNATI CHILDREN'S HOSPITAL	:	CROMBLEHOLME, M.D.'S ANSWER
MEDICAL CENTER, et. al.	:	TO PLAINTIFFS' COMPLAINT
	:	& JURY DEMAND
Defendants.	:	JURY DEMAND ENDORSED
	:	HEREON

NOW COMES Defendant Timothy Crombleholme, M.D, ("Dr. Crombleholme") by and through counsel, and answers Plaintiffs' Complaint & Jury Demand as follows:

FIRST DEFENSE

INTRODUCTION

1. Defendant Dr. Crombleholme denies the allegations in Paragraph 1 of Plaintiffs' Complaint.
2. Defendant Dr. Crombleholme denies the allegations in Paragraph 2 of Plaintiffs' Complaint.
3. Defendant Dr. Crombleholme denies the allegations in Paragraph 3 of Plaintiffs' Complaint.

PARTIES

4. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of Plaintiffs' Complaint, which are therefore denied.

5. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of Plaintiffs' Complaint, which are therefore denied.

6. Defendant Dr. Crombleholme admits, based on information and belief, that B.F. and A.F. were born in or around June 2011.

7. The allegations set forth a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant Dr. Crombleholme admits that CCHMC is a non-profit corporation, duly licensed and authorized to operate a hospital facility in the State of Ohio. Defendant Dr. Crombleholme further admits CCHMC is located at 3333 Burnet Avenue, Cincinnati, OH 45227. Defendant Dr. Crombleholme denies the remaining allegations of Paragraph 7 of Plaintiffs' Complaint as stated.

8. The allegations set forth a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant Dr. Crombleholme states that he was an employee of CCHMC during certain times at issue in Plaintiffs' Complaint. Defendant Dr. Crombleholme denies based on lack of knowledge any remaining allegations in Paragraph 8 of Plaintiffs' Complaint.

9. The allegations set forth a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant Dr. Crombleholme states that he was an employee of CCHMC while providing medical care to B.F. and A.F. The remaining allegations are not directed to Dr. Crombleholme and require no response. To the extent a response is required, Dr. Crombleholme is without information and therefore denies those allegations.

10. Defendant Dr. Crombleholme admits the allegations in Paragraph 10 of Plaintiffs' Complaint.

11. Defendant Dr. Crombleholme admits the allegations in Paragraph 11 of Plaintiffs' Complaint.

12. The allegations in Paragraph 12 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of Plaintiffs' Complaint, which are therefore denied.

13. The allegations in Paragraph 13 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of Plaintiffs' Complaint, which are therefore denied.

JURISDICTION AND VENUE

14. The allegations in Paragraph 14 of Plaintiffs' Complaint set forth a legal conclusion to which no response is required. To the extent a response is deemed required, Dr. Crombleholme states that the allegations in Plaintiffs' Complaint speaks for themselves.

15. The allegations in Paragraph 15 of Plaintiffs' Complaint set forth a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant Dr. Crombleholme states that the allegations in Plaintiffs' Complaint speaks for themselves.

16. The allegations in Paragraph 16 of Plaintiffs' Complaint set forth a legal conclusion to which no response is required. To the extent a response is deemed required,

Defendant Dr. Crombleholme states that the allegations in Plaintiffs' Complaint speaks for themselves.

FACTS

17. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 17 of Plaintiffs' Complaint are contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 17 of Plaintiffs' Complaint, which are therefore denied.

18. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 18 of Plaintiffs' Complaint are contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 18 of Plaintiffs' Complaint, which are therefore denied.

19. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 19 of Plaintiffs' Complaint are contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 19 of Plaintiffs' Complaint, which are therefore denied.

20. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 20 of Plaintiffs' Complaint are

contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 of Plaintiffs' Complaint, which are therefore denied.

21. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 21 of Plaintiffs' Complaint are contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 21 of Plaintiffs' Complaint, which are therefore denied.

22. Defendant Dr. Crombleholme admits the medical records of Plaintiffs speak for themselves. To the extent the allegations set forth in Paragraph 22 of Plaintiffs' Complaint are contrary to the medical records, Defendant Dr. Crombleholme denies them. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 22 of Plaintiffs' Complaint, which are therefore denied.

23. Defendant Dr. Crombleholme is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of Plaintiffs' Complaint, which are therefore denied.

COUNT I – NEGLIGENT CREDENTIALING

PLAINTIFFS V. CCHMC

24. Defendant Dr. Crombleholme hereby incorporates by reference his responses to the allegations set forth above, as if fully restated herein.

25. The allegations in Paragraph 25 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 25 of Plaintiffs' Complaint.

26. The allegations in Paragraph 26 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 26 of Plaintiffs' Complaint.

27. The allegations in Paragraph 27 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 27 of Plaintiffs' Complaint.

28. The allegations in Paragraph 28 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 28 of Plaintiffs' Complaint.

29. The allegations in Paragraph 29 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 29 of Plaintiffs' Complaint.

30. The allegations in Paragraph 30 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 30 of Plaintiffs' Complaint.

31. The allegations in Paragraph 31 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 31 of Plaintiffs' Complaint.

32. The allegations in Paragraph 32 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 32 of Plaintiffs' Complaint.

COUNT II - NEGLIGENCE

PLAINTIFFS V.CROMBLEHOLME

33. Defendant Dr. Crombleholme hereby incorporates by reference his responses to the allegations set forth above, as if fully restated herein.

34. Defendant Dr. Crombleholme denies the allegations in Paragraph 34 of Plaintiffs' Complaint.

35. Defendant Dr. Crombleholme denies the allegations in Paragraph 35 of Plaintiffs' Complaint.

36. Defendant Dr. Crombleholme denies the allegations in Paragraph 36 of Plaintiffs' Complaint.

37. The Defendant Dr. Crombleholme denies the allegations in Paragraph 37 of Plaintiffs' Complaint.

38. The allegations in Paragraph 38 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 38 of Plaintiffs' Complaint.

39. The allegations in Paragraph 39 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 39 of Plaintiffs' Complaint.

40. The allegations in Paragraph 40 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 40 of Plaintiffs' Complaint.

41. The allegations in Paragraph 41 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 41 of Plaintiffs' Complaint.

COUNT II - NEGLIGENCE

PLAINTIFFS V.LIM

42. Defendant Dr. Crombleholme hereby incorporates by reference his responses to the allegations set forth above, as if fully restated herein.

43. The allegations in Paragraph 43 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 43 of Plaintiffs' Complaint.

44. The allegations in Paragraph 44 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 44 of Plaintiffs' Complaint.

45. The allegations in Paragraph 45 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 45 of Plaintiffs' Complaint.

46. The allegations in Paragraph 46 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 46 of Plaintiffs' Complaint.

47. The allegations in Paragraph 47 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 47 of Plaintiffs' Complaint.

48. The allegations in Paragraph 48 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 48 of Plaintiffs' Complaint.

49. The allegations in Paragraph 49 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 49 of Plaintiffs' Complaint.

50. The allegations in Paragraph 50 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 50 of Plaintiffs' Complaint.

COUNT IV - VICARIOUS LIABILITY

PLAINTIFFS V. CCHMC

51. Defendant Dr. Crombleholme hereby incorporates by reference his responses to the allegations set forth above, as if fully restated herein.

52. Defendant Dr. Crombleholme is without knowledge of and therefore denies the allegations in Paragraph 52 of Plaintiffs' Complaint.

53. The allegations in Paragraph 53 of Plaintiffs' Complaint are not directed to Dr. Crombleholme and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme admits that CCHMC is a non-profit corporation, duly licensed and authorized to operate a hospital facility in the State of Ohio and it holds itself out as such. Dr.

Crombleholme denies the remaining allegations of Paragraph 53 of Plaintiffs' Complaint as stated.

54. Defendant Dr. Crombleholme is without knowledge of and therefore denies the allegations in Paragraph 54 of Plaintiffs' Complaint.

55. Defendant Dr. Crombleholme states that medical care provided to Plaintiffs was done pursuant to proper informed consent. Dr. Crombleholme is without knowledge of and therefore denies any remaining allegations in Paragraph 55 of Plaintiffs' Complaint as stated.

56. The allegations in Paragraph 56 of Plaintiffs' Complaint are not directed to Dr. Crombleholme, set forth a legal conclusion, and therefore require no response. To the extent a response is required, Defendant Dr. Crombleholme denies the allegations in Paragraph 56 of Plaintiffs' Complaint.

57. Defendant Dr. Crombleholme denies the allegations in Paragraph 57 of Plaintiffs' Complaint.

58. Defendant Dr. Crombleholme denies the allegations in Paragraph 58 of Plaintiffs' Complaint.

59. Defendant Dr. Crombleholme denies the allegations in Paragraph 59 of Plaintiffs' Complaint.

60. Defendant Dr. Crombleholme denies the allegations in Paragraph 60 of Plaintiffs' Complaint.

61. Defendant Dr. Crombleholme denies the allegations in Paragraph 61 of Plaintiffs' Complaint.

PRAYER FOR RELIEF

62. Defendant Dr. Crombleholme further denies that Plaintiffs are entitled to the relief requested in the unnumbered "WHEREFORE" section on Page 11 of Plaintiffs' Complaint.

63. Defendant Dr. Crombleholme denies any and all allegations not specifically admitted herein.

SECOND DEFENSE

64. Defendant Dr. Crombleholme states that the allegations set forth in Plaintiffs' Complaint fail to state a claim upon which relief can be granted.

THIRD DEFENSE

65. Plaintiffs have failed to comply with the requirements of Rule 8(A) of the Federal Rules of Civil Procedure requiring a short and plain statement of the claim showing that the party is entitled to relief and, for such reason, Plaintiffs' Complaint should be dismissed.

FOURTH DEFENSE

66. Any injuries sustained by Plaintiffs were the result of an unforeseeable and untoward series of events over which Defendant Dr. Crombleholme had no control, and as such, constitute an act of God for which this Defendant cannot be held liable.

FIFTH DEFENSE

67. Defendant Dr. Crombleholme states that if Plaintiffs sustained injury due to the negligent acts or omissions of any person, then these were the acts or omissions of persons other than this Defendant who are neither under the control of, nor in the employ of, this Defendant, and for whose acts and omissions this Defendant has no legal responsibility, and for which reason this Defendant is not liable.

SIXTH DEFENSE

68. Defendant Dr. Crombleholme states that the acts and/or omissions of persons other than the answering Defendant, who are neither under the control, nor in the employ of this Defendant, and for whose acts and omissions this Defendant has no legal responsibility, intervened between any acts or omissions on the part of this Defendant (which are specifically denied) and directly and proximately caused the alleged injuries which are the subject of this lawsuit, for which reason this Defendant is not liable.

SEVENTH DEFENSE

69. Defendant Dr. Crombleholme asserts all defenses available pursuant to Ohio common law and Ohio statutory law, including but not limited to the provisions of Senate Bill 281 as enacted (i.e., damage caps and merit determinations).

EIGHTH DEFENSE

70. Some or all of Plaintiffs' claims are barred by the law of comparative negligence and/or contributory negligence.

NINTH DEFENSE

71. Plaintiffs' Complaint is barred as to Defendant Dr. Crombleholme by their failure to join the real party in interest, an indispensable party pursuant to Federal Rule of Civil Procedure 19 and/or comply with the requirements of Federal Rule of Civil Procedure 17.

TENTH DEFENSE

72. Defendant Dr. Crombleholme asserts all defenses, privileges, presumptions, and rights available pursuant to Federal law, Ohio common law and Ohio statutory law governing medical peer review and credentialing, including but not limited to the provisions of Ohio Revised Code 2305.25 et seq.

ELEVENTH DEFENSE

73. Defendant Dr. Crombleholme is entitled to a setoff of damages and/or limitation of damages pursuant to statute or otherwise, and that the negligence of others proximately caused damages sustained by Plaintiff.

TWELFTH DEFENSE

74. Plaintiffs' claims are barred by the doctrine of informed consent, release, and waiver.

THIRTEENTH DEFENSE

75. Plaintiffs' claims are barred because Plaintiffs' lack capacity and standing to pursue the claims asserted in the Complaint.

FOURTEENTH DEFENSE

76. Defendant states that Plaintiffs expressly, impliedly, and/or primarily assumed a risk of injury. Defendant hereby preserves the defense of express and implied (or primary and secondary) assumption of the risk and, if applicable, the recovery, if any, of Plaintiff should be reduced and/or barred.

FIFTEENTH DEFENSE

77. Plaintiffs' claims are barred by Rules 3, 5, and 15 of the Federal Rules of Civil Procedure.

SIXTEENTH DEFENSE.

78. Defendant Dr. Crombleholme reserves the right to add any additional defenses, amend his answer, and file further pleadings as discovery progresses and/or to avoid injustice.

WHEREFORE, Defendant Dr. Crombleholme having fully answered, demands as follows:

1. Plaintiffs take nothing by the action;
2. Plaintiffs' Complaint be dismissed; and
3. Defendant Dr. Crombleholme be awarded costs of suit incurred herein and

such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/Allison G. Knerr

J. David Brittingham (0061577)

Allison G. Knerr (0088235)

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*Attorneys for Defendant Cincinnati
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Crombleholme, M.D. and Foong-Yen Lim, M.D.*

JURY DEMAND

Defendant Dr. Crombleholme hereby demands a trial by jury on all issues.

/s/Allison G. Knerr _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel, via filing with the electronic-filing system, this 20th day of August, 2021.

/s/ Allison G. Knerr
Allison G. Knerr